

**If you want to delay your 21 year old child with a disability's high school graduation so they can continue to receive services from their school district—
This is now possible!**

Did your child miss out on vital transition services during the pandemic such as community based-instruction and job training?

Did your child fail to receive other special education and related services in their IEPs?

Did your child develop new issues, such as behavioral or emotional issues?

Does your child need additional services, not in their IEP, before they graduate?

There is a new law in effect, [N.J.S.A. 18A:46-6.3](#), that allows your child to remain eligible to receive services from their school district after the school year in which they turn 21.

The new law:

- Extends the age of eligibility if your child turns 21 during the 2021-2022 school year.
- Allows your child to continue to receive **additional or compensatory** special education, related services, and transition services through at least June 30, 2023 if your child's Individualized Education Program (IEP) Team, including you, meets and decides that your child needs these services.
- Also extends the age of eligibility for students who will turn 21 during the 2022-2023 school year until at least June 30, 2024, if needed.
- Does not apply if your child turns 21 after June 30, 2023.

What to do if your child turned 21 during the 2021-2022 school year or will turn 21 in 2022-2023

- Write a letter to your case manager -- **consult sample letter on page 5 below.**
- Ask for an IEP meeting to discuss your child's need for additional or compensatory services.
- Tell them your child will not accept a diploma at this time.

Some reasons why your child may be entitled to receive "compensatory" special education and related services

- Your child did not receive all of the services or in the amounts required by their IEPs.
- Your child was not able to learn through virtual instruction.

- Some of your child’s IEP services could not be provided virtually. For example, access to community-based learning and job training was extremely limited.
- Your child did not have a computer or iPad or lacked access to the internet so was not able to consistently and appropriately participate in virtual instruction.

Reasons why your child may be entitled to “additional” special education and related services

- During the pandemic, your child may have developed new issues such as behavioral and emotional issues that were not included in their pre-pandemic IEP.
- Your child may have lost skills (regressed) and needs to be retaught the lost skills.
- Your child needs additional services before they graduate.

Preparing for the IEP meeting

- Think about what IEP services YOUR child did not receive, how YOUR child responded to the virtual instruction that was offered and what regression you observed.
- Think about what additional services your child needs before they graduate.
- Collect any assessments, progress reports, evaluations, grades, teacher comments and video recordings showing your child’s skill acquisition or regression. Ask for your district’s service logs.
- Document, to the extent that you can, all IEP services that were missed entirely or partially as well as additional services your child needs before they graduate.
- Document virtual services that were not appropriate for your child.
- Total the missed hours and the number of inappropriate hours for each service.

Be prepared at the IEP meeting to describe to the other members of the IEP team, the additional or compensatory education services being requested. This could include:

- All of the services in your child’s 2021-2022 IEP;
- More time in community-based instruction or job sampling;
- Only a particular type of service such as physical therapy;
- Additional services to address any regression as well as new needs that developed during the pandemic or needs not yet fully addressed.

Be prepared at the IEP meeting to say where you want the additional or compensatory services to be provided. Options could include:

- Remaining in the public or private school that your child currently attends;
- Attending a different public or private school;
- Agreeing to a block of hours for specific services, with you scheduling the services from a list of providers at mutually agreed-to times.

What to do if you don’t agree with the proposed IEP?

- You have a right to file for a mediation conference and/or a due process hearing.

- It you file for mediation or due process, this will invoke your child’s right to “stay-put” in the last agreed upon placement, often simply referred to as “the stay-put.” This maintains the status quo so that your child will continue to receive services in their IEP until the mediation or due process is resolved or you reach agreement with the district.
- In order to be ensured of obtaining the stay-put, it is recommended that you file for mediation or due process no later than June 30th of the year in which your child turns 21.
- The stay-put will likely be the IEP that was in operation in June but may include extended school year (ESY) if that was provided in prior IEPs and was removed from the last IEP because your child was expected to graduate.
- If the district will not honor the stay-put, you need to file for emergent relief. An emergent relief application requires a pending due process hearing, so if you filed for mediation only, you must include a request to convert from mediation to due process.
- For information on how you can file due process or emergent relief without an attorney, refer to the recordings of Parent Webinars listed in the resources below. For legal support for including ESY in your child’s stay-put program, see link to the B.D. v. Edison Twp. Board of Educ. decision in the resource list.

Legal assistance is available to assist eligible lower income families

- Lower income families residing in northern and central New Jersey can contact Education Law Center (973-624-1815, ext. 30).
- All other families can contact Disability Rights New Jersey (609-292-9742 or 800-922-7233).

What to do if your district refuses to even hold an IEP meeting.

- If there is time remaining before June 30, 2022, try calling your County Office of Education (<https://www.nj.gov/education/about/counties/>). If not successful, you need to file for mediation or due process.

Is there a deadline for filing mediation or due process asking for the additional or compensatory services?

- With some exceptions, a parent or adult student must file for due process within two years from the time that they knew or should have known about the alleged action that forms the basis of their complaint. 20 U.S.C. Sec. 1415(f)(3)(C). N.J.S.A. 18A:46-6.3 was enacted on June 16, 2021. It provided new rights to students by extending a student’s eligibility to receive additional or compensatory services from their public school for up to at least one school year beyond the school year in which the student turned 21. The earliest a parent or adult student could have been made aware of these new rights was June 16, 2021. This suggests, therefore, that the earliest the statute of limitations could expire would be June 16, 2023. Since this is a new law, however, it is unknown how courts will interpret the “knew or should have known date” for a particular parent.

AVAILABLE RESOURCES

Recordings of Parent Webinars on filing due process and emergent relief

- Recording of June 15 Parent Webinar: Filing Due Process and Invoking Stay-Put When You Disagree With Your Child's Graduation (<https://vimeo.com/563318478/fbdfb34936>) (includes detailed information on filing a due process petition).
- Recording of June 16 Parent Webinar: Filing Due Process and Invoking Stay-Put When You Disagree With Your Child's Graduation (<https://vimeo.com/564116627/6a5603e608>) (modified from June 15 webinar to address signing of S-3434).
- Recording of June 22 Parent Webinar: Preparing and Filing Emergent Relief for Stay-Put (<https://vimeo.com/566169571/c984597eff>).

Some decisions brought to enforce stay-put under N.J.S.A. 18A:46-6.3

- B.D. v. Edison Twp. Board of Educ., OAL Dkt. No. EDS 05026-21 (June 21, 2021) (<https://www.nj.gov/education/legal/specialed/2021/2021-32955ER.pdf>)
- F.R. & N.R. o/b/o C.R. v. Freehold Regional Bd. Of Educ., eds. (OAL N.J. July 8, 2021) (<https://www.nj.gov/education/legal/specialed/2021/2022-33078ER.pdf>)
- J.S. o/b/o D.D. v. Wayne Township Bd. Of Educ., eds05781-21 (OAL N.J. July 16, 2021) (<https://www.nj.gov/education/legal/specialed/2021/2021-32990ER.pdf>)

Other resources

- [N.J.S.A. 18A:46-6.3](#)
- ELC, The Right to Special Education in New Jersey: A Guide for Advocates (2008) (https://edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf)
- ELC, FAQ on Compensatory Education in Response to COVID-19 ([https://edlawcenter.org/assets/files/pdfs/publications/FAQ%20on%20Compensatory%20Education%20in%20response%20to%20COVID-19%20\(2nd%20ed.%20Jan%202022\).pdf](https://edlawcenter.org/assets/files/pdfs/publications/FAQ%20on%20Compensatory%20Education%20in%20response%20to%20COVID-19%20(2nd%20ed.%20Jan%202022).pdf))
- ELC, COVID-19 and Students with Disabilities: Frequently Asked Questions (Dec. 2020) (https://edlawcenter.org/assets/files/pdfs/publications/COVID_19_and_SWD_FAQ_3rd_Ed_De_c.pdf).
- The Arc of New Jersey Family Institute, IEP Go Bag (<https://www.thearcfamilyinstitute.org/resources/iepgobag.html>).

SAMPLE LETTER REQUESTING AN IEP MEETING TO DISCUSS COMPENSATORY OR ADDITIONAL SERVICES

NOTE: Letter best sent by fax or certified mail to confirm receipt

Date

Case Manager
School District
Address

Dear [Name of Case Manager]:

Re: [student name]

I hope this letter finds you well. I have learned that there is a new law, N.J.S.A. 18A:46-6.3, which went into effect on June 16, 2021 and can allow [me (if adult student) or my child] to continue receiving additional or compensatory services through an additional school year or until June 30, 2023. I am requesting an IEP meeting to discuss [my need or my child's need] for additional or compensatory services, what those services should consist of, and how they should be provided.

Based on the need for additional or compensatory services, my child does not [or I do not (if adult student)] intend to accept a high school diploma in June of this year.

Thank you for your prompt attention to this matter and I look forward to hearing from you regarding the scheduling of the IEP meeting.

Sincerely, [signature and name of adult student and/or Parent/Guardian]
Contact Information: [include mailing address, email and phone number]

Cc: Consider including School District Superintendent or Director of Special Education.

SAMPLE LETTER GIVING PERMISSION TO PARENT TO CONTINUE TO ACT ON BEHALF OF ADULT STUDENT AFTER THEY TURN 18 YEARS OF AGE

NOTE: Letter best sent by fax or certified mail to confirm receipt

Student Name
Student Address

Date

Case Manager
School
School address

Dear Case Manager:

As an adult student, I am writing to notify you that I am providing my consent to authorize and request that my parent(s) [and/or other adult] **[fill in their name(s)]** be included in all special education decisions pertaining to my IEP, including all meetings, phone calls, and correspondence.

I also give my consent for them to advocate verbally and in writing on my behalf for all special education needs, and to have access to all my educational records including those protected by FERPA and HIPAA, as well as any documents specific to Complaint Investigations, Mediation and Due Process. I further authorize my parent(s) [and/or other adult] to file mediation, due process, complaint investigations and litigation in federal or state courts on my behalf.

Sincerely,

[signature of adult student]
[name of student]